



ADMINISTRATIVE POLICIES
AND PROCEDURES
State of Tennessee
Department of Correction

Approved by: Tony Parker

Subject: CONTRACT MONITORING OF PRIVATELY MANAGED FACILITIES

Index #: 205.03 Page 1 of 8

Effective Date: August 1, 2020

Distribution: A

Supersedes: 205-03 (12/21/17)
PCN 18-39 (6/29/18)

- I. **AUTHORITY:** TCA 4-3-603 and TCA 41-24-109.
- II. **PURPOSE:** To establish procedures for the monitoring of Tennessee Department of Correction (TDOC) contracts for the operation of privately managed facilities to ensure that the requirements of the contracts are being met.
- III. **APPLICATION:** To TDOC employees and employees of privately managed facilities.
- IV. **DEFINITIONS:**
 - A. **Clinical Services Auditor:** For purposes of this policy, TDOC employee(s) assigned to TDOC Central Office Division of Clinical Services who are authorized by the Commissioner to audit performance of the clinical services vendors who are under contract for the provision of those services (medical, behavioral health, and clinical case management) to the Department.
 - B. **Contract Monitoring Director (CMD):** For purposes of this policy, the senior contract monitor who coordinates the contract monitoring process.
 - C. **Contract Monitor of Compliance (CMC):** TDOC employee(s) authorized by the Commissioner to monitor contract compliance at privately managed facilities.
 - D. **Contract Monitor of Operations (CMO):** TDOC employee(s) authorized by the Commissioner to serve as the approving authority for specific actions occurring at privately managed facilities. In the absence of the CMO, the CMC assigned to that facility will serve that function. In the absence of both the CMO and CMC at privately managed facilities, the necessary notification/request for authorization will be made by telephone to the correctional administrator (CA). If the CMO is not reachable via phone, the CMC will be contacted. If both the CMO and CMC are unavailable by telephone, the CA shall be contacted for required authorizations or notifications.
 - E. **Contract Monitoring Instrument:** A document used by designated TDOC staff to measure, evaluate, and document contractor performance and compliance with the terms of designated contracts.
 - F. **Essential Instrument Items:** Actions or responsibilities of contractors indicated on the Contract Monitoring Instruments that have been determined to require 100% compliance.

Subject: CONTRACT MONITORING OF PRIVATELY MANAGED FACILITIES

G. Facility Management and Maintenance Regional Director (FMM): For purposes of this policy, TDOC employee(s) assigned to TDOC Central Office Division of Facility Management and Maintenance who are authorized by the Commissioner to monitor performance of correctional facility maintenance services vendors who are under contract for the provision of those services (facility maintenance) to the Department.

H. Non-Compliance Report (NCR)/Liquidated Damage Event(LDE): Report issued by the monitor to the contractor electronically detailing any finding of non-compliance with the terms of the contract or applicable policies, citing the contract/policy sections that have been violated, the details of the violation, and providing the contractor a space in which to respond.

I. Routine Instrument Items: Actions or responsibilities of contractors indicated on contract monitoring instruments that may indicate that less than 100% compliance will not automatically result in issuance of an NCR/LDE and allowing the monitor some discretion.

J. Summary of Non-Compliance Reports/Liquidated Damage Event (SNR): Reports by the CMC summarizing any new or unresolved NCR/LDEs, the contractor's response/corrective action, verification of corrective action, and TDOC management comments.

K. Weekly Report of Daily Activities: Reports prepared by the monitors detailing their weekly/daily monitoring activities.

V. POLICY: Designated staff of the Department under the guidance of the Office of the Inspector General shall monitor the performance of all contracts for the operation of privately managed facilities.

VI. PROCEDURES:

A. The CMD shall develop procedures and specific guidelines for the development of instruments for use by designated staff in assessing contractor performance at privately managed facilities.

B. All contracts shall be monitored according to the frequency specified in the monitoring instruments or more often as indicated by the performance level of the individual contract.

C. The Assistant Commissioner of Prisons, Inspector General, and CMD shall ensure that monitoring occurs on a consistent and ongoing basis. All privately managed facilities shall be assigned one full-time CMO and one full-time CMC as on-site monitors. There shall be at a minimum two clinical services auditors within TDOC Central Office who report to the Chief Medical Officer. There shall be at a minimum one FMM within TDOC Central Office who report to the Facility Management and Maintenance Director.

D. Contract Monitoring Instrument Development and Training

1. Instruments for privately managed institutions shall be developed by CMD and monitors. The instruments shall be approved by the Inspector General in consultation with the General Counsel for use in evaluating contract compliance for privately managed facilities. The format and content of each instrument shall be the responsibility of the CMD. All instruments shall be forwarded to the contractor prior to implementation.

Subject: CONTRACT MONITORING OF PRIVATELY MANAGED FACILITIES

2. The applicable instruments shall be reviewed at least annually by the CMD and appropriate Central Office directors designated by the Inspector General, the Assistant Commissioner of Prisons and Assistant Commissioner of Rehabilitative Services. Assessment items on the instruments shall be indicated thereon as being either routine or essential. The determination as to which are essential and which are routine shall be made in consultation with the General Counsel, on the basis of importance and the degree of need for prompt action towards remediation (notice, response, corrective action, and verification).
3. Any revision proposed to an instrument as a result of review shall be made in consultation with the General Counsel. All revisions to the instruments shall be forwarded to the contractor and Warden at least 30 days prior to implementation unless otherwise directed by the Commissioner.
4. Instruments for use at privately managed facilities shall assess items for PREA and Title VI training requirements unless these requirements are monitored by compliance reviews or other monitoring activities.
5. The CMD and CA shall conduct ensure mandatory contract monitoring training is conducted for the onsite monitors at least annually or as needed.
6. The Chief Medical Officer/designee shall ensure that clinical services contract auditor training is conducted at least annually or as needed.
7. The Facility Management and Maintenance Director/designee shall ensure that facility maintenance contract monitoring training is conducted at least annually or as needed.

E. Monitoring and Non-Compliance Findings

1. Contract monitoring shall be accomplished by monitors, FMM, and auditors utilizing the appropriate instruments.
2. The monitors, FMM, and auditors shall forward all completed instruments to the CMD and CA for review by the 10th business day after the end of the monitoring period.
3. Contract monitors shall generate a weekly report of daily activities and forward electronic copies to the CMD for review.
4. When monitors, FMM, and auditors detect issues/concerns and these issues are not considered to reflect serious, dangerous, or systemic problems, the monitors and auditors will communicate these to the CMD, CA, for clinical issues the Chief Medical Officer and for facility maintenance issues Facility Management and Maintenance Director for appropriate action which may include an NCR/LDE.

Subject: CONTRACT MONITORING OF PRIVATELY MANAGED FACILITIES

5. Significant issues of a nature that threaten security or staff/inmate health/safety shall be communicated from the monitors, FMM and auditors immediately to the contractor and Warden, CMD, CA, and for clinical issues the Chief Medical Officer and for facility maintenance issues Facility Management and Maintenance Director for appropriate action which may include an NCR/LDE. These significant issues shall be documented by item number or in the last row entitled NIN (no item number). The monitors, FMM and auditors shall consult with the CMD, CA, and for clinical issues the Chief Medical Officer and for facility maintenance issues Facility Management and Maintenance Director to determine which category (essential or routine) the finding should be considered for response/corrective action/verification purposes.
 - a. The contractor shall respond to non-compliant items within ten business days. All contractor responses shall include a plan of corrective action (POCA) which is subject to the approval of the CMD. If a specific corrective action is accomplished by the contractor during the time period between monitor's, FMM's, and auditor's awareness of the noncompliance and the drafting of the contractor's response, the response should include documentation to demonstrate that the finding has been addressed.
 - b. If the contractor does not concur with the NCR/LDE and/or does not file an acceptable plan of corrective action within ten business days, the non-compliance item(s) shall be reviewed by the CMD, CA, for clinical issues the Chief Medical Officer or designee, for facility maintenance issues Facility Management and Maintenance Director, and appropriate Assistant Commissioner(s) as applicable for resolution. The resolution shall be communicated to the contractor by the CMD and CA and documented on the SNR.
 - c. Corrective action/compliance shall be verified immediately upon receipt of the contractor's response, if appropriate, and recorded on the subsequent instrument and the SNR. Continued monitoring shall be at the discretion of the CMD, and for clinical issues the Chief Medical Officer, and for facility maintenance issues Facility Management and Maintenance Director.
 - d. A copy of each NCR/LDE with response(s) shall be on file in the office of the CMC, CMD, CA, and for clinical issues the Chief Medical Officer, and for facility maintenance issues Facility Management and Maintenance Director. The next instrument completed for that contract area shall reference any related NCR/LDEs and the responses generated during the monitoring period.
 - e. The CMC, FMM and auditors shall compile an SNR for each monitoring period. The SNR and the related NCR/LDEs and responses shall be forwarded to the CMD, CA, and for clinical issues the Chief Medical Officer, and for facility maintenance issues Facility Management and Maintenance Director by the 10th business day of the following month by the CMC.

Subject: CONTRACT MONITORING OF PRIVATELY MANAGED FACILITIES

- (1) Issues noted on the SNR which are not resolved by the time the SNR is submitted shall be noted as "outstanding issues" and shall be included on each subsequent month's SNR until resolution is documented. Follow-up reviews of non-compliant issues shall be completed. For non-compliant items that require on-going corrective action plans, monitors, FMM, and auditors shall verify that the corrective action plans have been initiated during the monitor's, FMM's, and auditor's next area visit and noted on the SNR. Repetitive issues will be reported directly to the CMD, CA, for clinical issues the Chief Medical Officer, and for facility maintenance issues Facility Management and Maintenance Director for a more prompt review of the issue.
- (2) Unresolved findings of non-compliance shall be reviewed by the CMD. The unresolved findings shall be discussed with the CA, Inspector General, appropriate Assistant Commissioner(s), for clinical issues the Chief Medical Officer, and for facility maintenance issues Facility Management and Maintenance Director and contractor representatives. Directives for corrective action to be taken and documentation of a timeline for completion of corrective action may be issued to the contractor in the TDOC management comments section of the finalized SNR. If formal contract enforcement action is to be taken by TDOC for breach of contract, notification will be delivered via memorandum from the Commissioner or other appropriate TDOC management.
- (3) A copy of the finalized SNR and any directives shall be forwarded to the Deputy Commissioners, the appropriate Assistant Commissioner(s), the Chief Medical Officer, Facility Management and Maintenance Director, CA, appropriate directors, contractor, and other applicable Central Office staff by the CMD.
 - (a) The contractor shall respond to the CMC regarding any unresolved findings of non-compliance and corrective action required within ten business days of receipt of any such request, unless otherwise stipulated on the SNR.
 - (b) If concerns still exist upon receipt of the contractor's response, the CA, for clinical issues the Chief Medical Officer, for facility maintenance issues Facility Management and Maintenance Director, and CMD in consultation with the General Counsel who will determine the next steps.

6. The monitors, FMM, and auditors shall conduct a follow-up review for any item(s) found in non-compliance. This review shall be conducted at the discretion of the CMD within 60-90 days of the initial finding. In addition, all items will be re-evaluated on the next instrument completed after the initial finding. The CMD shall track all NCR/LDEs submitted with the SNRs for purposes of determining if a breach of contract has occurred. [See VI.(F) below].

7. This process does not preclude the monitors, FMM, and auditors from immediately addressing urgent issues directly to the contractor and TDOC administration, as appropriate.

Subject: CONTRACT MONITORING OF PRIVATELY MANAGED FACILITIES

8. The CA, for clinical issues the Chief Medical Officer, for facility maintenance issues Facility Management and Maintenance Director or CMD may request monitors, FMM, and auditors to audit specific contract requirements for special compliance inquiries.

F. Breach of Contract Process

1. Issues of breach for any contract shall be determined according to the provisions of the contract concerning breach of said contract, after review of instrument assessment indications of non-compliance, the notice of non-compliance given to contractor, the response of the contractor, and the adequacy of any corrective action plan indicated, as provided in Section VI.(E) above. The review shall be made by the Inspector General, CMD, CA, General Counsel, for clinical issues the Chief Medical Officer, and for facility maintenance issues Facility Management and Maintenance Director.
2. If on the basis of such review it appears that the contractor is in breach, the reviewers shall further recommend which remedy or remedies available under the contract shall apply. The General Counsel shall be the Commissioner's designee for issuing notice of breach to the contractor.
3. The Department may determine, based on the circumstances of the non-compliance, that the finding should result in either imposition of immediate liquidated damages or a cure period. The General Counsel shall notify the contractor in writing of the breach and prescribe the method for response and verification.
 - a. If determined that immediate liquidated damages are appropriate, liquidated damages shall be assessed beginning the day of the NCR/LDE and shall be discontinued on the date of the contractor's response/notification of corrective action if a monitor verifies that corrective action has cured/appears to cure the breach.
 - b. If the Inspector General, in consultation with the General Counsel determines that the situation requires a cure period, a monitor, FMM, or auditor shall verify the contractor's corrective action plan by the end of the cure period and notify the CMD, CA, for clinical issues the Chief Medical Officer, and for facility maintenance issues Facility Management and Maintenance Director of the results of the verification. If the corrective action is determined not to cure the breach, liquidated damages may be assessed beginning the day after the cure period until the breach is verified as cured.
 - c. Any subsequent non-compliance finding for the same item within 12 months may result in a notice of breach and immediate liquidated damages from the day of the breach until the day a monitor, FMM, or auditor determines that the breach has been cured.
4. The contractor's responses to all breach notifications shall be provided by the contractor on the initial NCR/LDE form attached to the Letter of Notification. All contractor responses shall be provided in writing to the monitor. The CMC shall verify receipt and forward the response to the CMD, CA, for clinical issues the Chief Medical Officer, and for facility maintenance issues Facility Management and Maintenance Director. The CMC shall indicate the final disposition of the breach and corrective action taken by the contractor on the SNR.

5. The CMC shall include a summary of the contractor's response to all Letters of Notification, as well as verification of corrective action, on the monthly SNR.

G. Liquidated Damages Process

1. The amount of the liquidated damages shall be calculated in accordance with the contract by the Inspector General in consultation with the General Counsel.
2. The liquidated damages amount calculated in accordance with the contract shall be reviewed for reasonableness taking into account the following factors:
 - a. The contractor's action(s) in mitigation of the breach condition(s)
 - b. Prevailing circumstances that are both a factor in the existence of the breach condition(s) and are reasonably determined to have presented a material impediment to the contractor's ability to avoid the breach condition(s)
 - c. The quantum of probable harm resulting from the breach condition(s) as a whole is reasonably determined to be less than applicable liquidated damage calculation.
3. Any determination of liquidated damages shall be communicated by the Commissioner separately and in writing with copies to the CMD, contractor, subcontractor if applicable, Correctional Administrator, General Counsel, Assistant Commissioner of Prisons, Assistant Commissioner of Rehabilitative Services, Chief Financial Officer, Chief Medical Officer, Facility Management and Maintenance Director, Director of Fiscal and budget, Chief of Staff, Inspector General and monitors, FMM, and auditors

H. Inspections, Audits, and Other Reviews

1. Each privately managed facility shall be subject to an audit annual inspection/compliance review as specified in Policy #103.07 and Commissioner-directed reviews. Copies of all compliance annual inspection/compliance review reports and the management responses addressing findings of non-compliance related to contract areas shall be provided to the Deputy Commissioners, Assistant Commissioners, appropriate executive staff, administrators, directors, and the CMD.
2. The Office of Investigations and Conduct (OIC) TDOC Investigations Unit may perform investigations into contract issues at the direction of the Commissioner/designee.
3. Other specific area reviews may occur as directed by the Commissioner/designee.
4. Central Office Directors or other TDOC employees whose responsibilities include oversight of programs/procedures which contractors are required to provide shall advise monitors, CMD, CA, Chief Medical Officer, Facility Management and Maintenance Director, and appropriate directors in writing of failure of contractors to deliver services, provide required reports or specially requested materials/documents in a timely manner, as well as any other concerns that may arise concerning contractor performance in their area of responsibility.

Subject: CONTRACT MONITORING OF PRIVATELY MANAGED FACILITIES

- I. The CMD/designee shall distribute on a quarterly basis a summary of recurring non-compliance issues at privately managed facilities to all executive staff.
- J. Information received from outside agencies [i.e., State Fire Marshal inspections, Department of Health sanitation inspections, American Correctional Association (ACA), U.S. Department of Justice, etc.] that may have a bearing on the assessment of a contractor's performance will be documented and referenced in any subsequent report concerning contractor performance.
- K. The Director of Contracts Administration shall ensure that the CMD, CA, Chief Medical Officer, Facility Management and Maintenance Director, and monitors, FMM, and auditors have a current copy of contracts officiated between the State and the privately managed facility operator.

VII. ACA STANDARDS: 1-CO-1B-10.

VIII. EXPIRATION DATE: August 1, 2023.